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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/07

SPONSOR Griego LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Penalties for Used Oil Violations SB 266

ANALYST Wilson

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Corrections Department (CD)

Environment Department (ED)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 266 amends Section 74-4-11 NMSA of the Hazardous Waste Act. This bill adds a new paragraph making it unlawful for any person to knowingly store, treat, dispose of transport, cause to be transported, market or otherwise handle any used oil in knowing violation of any material condition or requirement of any applicable rule adopted and promulgated pursuant to the Hazardous Waste Act. Any person convicted of violating this provision is guilty of a fourth degree felony punishable by incarceration of up to eighteen month and/or a fine of up to \$10,000 per violation per day.

Senate Bill 266 also amends section D of 74-4-11 NMSA by changing the word "he" to "person" which makes the application of this part gender neutral.

## **FISCAL IMPLICATIONS**

ED does not anticipate that Senate Bill 266 will create a significant burden on existing resources. No financial impact is anticipated.

CD could see increased costs as a result of any new crime, but the number of convictions as result of this bill is likely to be minimal

## **SIGNIFICANT ISSUES**

Entities that now manage used oil are subject to regulation and enforcement by the federal government through the Environmental Protection Agency (EPA) and the state through ED. Although this facet of environmental regulation can be delegated from EPA to the state, EPA changed that delegation because New Mexico has no criminal penalty provision in statute for used oil violations. Senate Bill 266 will satisfy this federal requirement and allow delegation of the program to New Mexico.

New Mexico examples of entities subject to the used oil regulations are:

- Generators (e.g., auto service businesses)
- Collection centers (e.g., Jiffy Lube, solid waste transfer stations)
- Transporters and transfer facilities (e.g., Safety-Kleen, Honstein Oil, Thermofluids)
- Processors and re-refiners (e.g., Mesa Oil)
- Off-spec oil burners (e.g., asphalt plants, industrial oil-fired space heaters)
- Marketers (e.g., Mesa Oil, Thermofluids)

Senate Bill 266 will not apply to a “do-it-yourself” oil change; only to mainly commercial interests that manage large quantities of used oil on a regular basis. Existing New Mexico regulations relax the regulatory burden on these facilities. In contrast, EPA requires a more stringent regulatory framework that assumes the used oil is hazardous waste. EPA recognized this over 10 years ago and expects states to obtain program authorization so that these entities can be regulated by one authority with a “common-sense” approach. The passage of Senate Bill 266 will make this happen.

Criminal penalties will only apply to knowing violations and even then primarily those resulting in substantial danger of a significantly adverse environmental impact. They will not apply to inadvertent spills that are promptly cleaned up. Any enforcement will be done by the AGO.

## **ADMINISTRATIVE IMPLICATIONS**

ED states there are no significant implications. Seeking criminal penalties authorized by Senate Bill 266 will require ED to coordinate with the AGO. This is no different than the process ED currently follows for the existing criminal penalties under the Act.

## **TECHNICAL ISSUES**

The AGO states the bill as drafted implies that “used oil” does not fall within the current definition of “hazardous waste” and thus there is a need to enact a separate and distinct violation. Further, Senate Bill 266 does not include a definition of “used oil”. It is unclear as to whether “used oil” only refers to used motor oil or whether “used oil” refers to other oils or oil by-products produced in other industries.